

REMARKS

This paper is responsive to the Final Office Action dated February 6, 2006. Claims 1 - 7 are pending in this application and have been rejected. Reexamination is respectfully requested in light of the foregoing amendments and following remarks.

Amendments to the Claims

The claims have been amended to correct obvious errors in the spelling and punctuation. A comma was missing between "metal soap processing" and "fluorine". Applicant's specification at page 5, lines 8 - 14 originally stated the Markush group with the comma present. It should also be noted that in Applicant's response to the previous Office Action, at page 6, line 5 up from the bottom, Applicant correctly argued that the claim language was "metal soap processing, fluorine processing . . ."

Still further, the spelling of perfluoroalkylphosphate has been corrected. The insertion of a "p" in place of the "f" is a clear typographical error. The designation of the correct term is also found at page 5, lines 8 - 14. It is respectfully submitted that these are minor typographical errors and do not effect the scope of the claims.

The Rejection

In the outstanding Office Action at page 4, paragraph number 8, the Examiner addressed the newly presented claims which included the Markush group from page 5 of Applicant's specification.

In the outstanding Office Action at page 5, line 7 the Examiner argues that there is an explicit teaching of "combining or treating any fluorinated polymer with a hydrophobic manner". Applicant has performed word searches and identified terms not found in the Lentini reference, or in the secondary reference:

An external skin preparation comprising:

- (1) octyl methoxycinnamate,
- (2) oxide selected from the group consisting of titanium oxide, zinc oxide and mixtures thereof, wherein the said oxides are treated in a hydrophobic manner selected from the group consisting of methyl hydrogen polysiloxane and silane coupling agents, metal soap processing, fluorine processing with perfluoroalkylphosphate diethanolamine salt and perfluoroalkylsilane and processing with dextrin fatty acid ester, and
- (3) glucoside selected from the group consisting of polyoxyethylene methyl glucoside, polyoxypropylene methyl glucoside and mixture thereof.

In the above quoted portion of the claim, none of the terms claimed appear in the Lentini reference. Applicant's constituents of the Markush group are not explicitly found in the art. Therefore, this rejection turns on whether the Examiner is correct in arguing that there is a teaching of combining or treating any fluorinated polymer with a hydrophobic manner.

Initially, the Examiner should note that in the claims, it is the oxides of titanium oxide and zinc oxide that are treated in a hydrophobic manner with these specific three treatments specified in the Markush group. Applicant does not claim and never claimed treatment of a fluorinated polymer. Applicant uses entirely different chemistry, namely fluorine processing with perfluoroalkylphosphate diethanolamine salt and perfluoroalkylsilane. These two substances are clearly not PTFE or Teflon.

The Lentini reference (US case) incorporates by reference US patents 5,093,110 and 4,052,278 to illustrate Teflon particles. These incorporations show that the PTFE is a fluororesin and not a fluorinated polymer.

At page 4, paragraph 8, line 3 of the Office Action, the Examiner argues that Applicant claims treatment of the titanium and zinc oxides in a hydrophobic manner, such as a fluorinated polymer. However, the fluorinated polymer of Lentini is not the fluorinated polymer as claimed. Lentini does teach treating of sunscreen agents of zinc oxide and titanium oxide in a hydrophobic, but Lentini does not do it with Applicant's claimed three manners (Markush group). Instead, Lentini treats with hydrocarbon oils.

The Examiner cites page 3, lines 10 - 12 of WO 00/33803. The Examiner argues that Applicant admits that Lentini teaches of the presence of a fluorinated polymer that is incorporated into

sunscreen composition. Applicant agrees only that Lentini teaches the use of Teflon (PTFE), which is a fluorinated fluororesin having a network structure. On the other hand, fluorinated polymers have no network structure like a resin has. Still further, Applicant does not agree that Lentini teaches or suggests in any way the claimed fluorinated polymers set forth in the Markush group or for that matter the whole universe of fluorinated polymers.

Next, the Examiner cites page 3, lines 10 - 12 of the WO 00/33803 disclosure. The Examiner, however, quotes out of context and does not include the entire sentence which is as follows:

It is now been unexpectedly discovered that SPF value of a sunscreen composition can be increased when a fluororesin polymer having a submicron particle size is combined with a sunscreen agent.

The fluororesin polymer of '803 quoted above is always a powder, while Applicant's claimed hydrophobic manner is always liquid, not the PTFE resin.

The submicron particle size referred to is that of the Teflon fluororesin, and is not in any way related to the fluoro material set forth in the Markush group. The portion relied upon by the Examiner relates to particles, not substances which can be used to coat the zinc or titanium dioxide to provide the claimed hydrophobic manner.

Next, the Examiner cites page 4, line 3, which reads as

follows:

The fluororesin can be any fluorinated polymer that is well known for having low friction properties and for being used as a dry lubricant powder.

The Examiner read a portion of the sentence out of context and eliminated friction properties and being used for a dry lubricant powder. Still further, the Examiner would ignore that the fluororesin is preferably PTFE, commonly known as Teflon (see next sentence). This is not the claimed hydrophobic manner fluorine processing with perfluoroalkylphosphate or perfluoroalkylsilane. Still further, there is nothing in this paragraph that relates PTFE which is non-sticky and which in any suggests hydrophobic coating of the oxides as claimed.

Next the Examiner cites page 4, line 12 that in its entirety reads as follows:

The fluororesin is incorporated into an oil component of the final composition. The oil component can be any cosmetically or pharmaceutically acceptable vehicle that is hydrophobic (i.e., oil based).

This is a teaching of incorporation of the fluororesin with an oil-based material. It is not, however a specific teaching of or suggestion of the claimed materials in Applicant's Markush group. The real teaching is that the fluororesins, which can be used as a dry lubricant powder (see page 4, line 4), may be used with oil-based materials.

The Examiner refers to oil components, however, oil

components do not by themselves suggest the specific claimed components set forth in Applicant's claims. The focus of the Examiner on oil components is not relevant to the claimed invention, which requires treatment in a hydrophobic manner with the members of the Markush group. It is well known that oil components are known in every field of endeavor. However, specific components such as those claimed by Applicant cannot be suggested or made obvious by this common knowledge of oils. At page 4, line 28, the sentence reads as follows:

Alternatively, the fluororesin can be pre-dispersed in a hydrocarbon oil and, preferably, in polyisobutene.

The Examiner contends that this is a teaching of and guide to one of skill in the art to use any fluorinated polymer along with any known sunscreen agent in order to increase the SPF of the sunscreen composition. This is, however, not the gist of what is claimed in the Markush group. The Examiner has not addressed the terms of the Markush group, or in any way shown how the terms of the Markush group can be rendered obvious by teachings of hydrocarbon oils which are cited at page 4, line 28.

The Examiner at page 5, beginning at line 4, argues that Lentini states that the fluorinated polymer is incorporated or treated with an oil, a hydrocarbon oil, or a vehicle that is hydrophobic, and then the Examiner reasons that this provides the skilled artisan with explicit teaching of trying "any fluorinated polymer with a hydrophobic manner". Applicant respectfully

traverses this conclusion by the Examiner because the reference simply does not provide or teach any or suggest the members of the Markush groups set forth in each of the independent claims.

The Office Action continuously substitutes the words fluorinated copolymer for the claimed words titanium oxide and zinc oxides and mixtures thereof that are treated in a hydrophobic manner. Applicant does not claim treating fluorinated polymers. Applicant claims treating of titanium oxide and zinc oxide with specific claimed fluorine processing using perfluoroalkylphosphate or perfluoroalkylsilane.

Claim Rejections - 35 USC § 103

In the portion of the Office Action, paragraph 9, page 5, the Examiner states the rejection under 35 USC § 103. However, this rejection is a repeat of the initial Office Action, which did not include any analysis of the Markush group, which was not before the Examiner at that time. Therefore, the previous rejection, and the rejection as restated is simply not relevant to the claimed subject matter now before the Examiner. It is respectfully submitted that it is paragraph 8, beginning on page 4 which states the rational for rejecting the claims now at issue.

In view of the foregoing, it is respectfully submitted that

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Docket No.: SHD-103-USAP

the application is now in condition for allowance, and early action in accordance thereof is requested. In the event there is any reason why the application cannot be allowed in this current condition, it is respectfully requested that the Examiner contact the undersigned at the number listed below to resolve any problems by Interview or Examiner's Amendment.

Respectfully submitted,



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